

HOUSE BILL 242

Introduced by Swanson, et al.

1/19	Introduced
1/19	Referred to Natural Resources
1/19	First Reading
1/19	Fiscal Note Requested
1/25	Fiscal Note Received
1/25	Fiscal Note Printed
2/03	Hearing
2/13	Tabled in Committee

1 House BILL NO. 242  
 2 INTRODUCED BY B. Sullivan  
 3 Reagan Stupfel Early Deherty  
 4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE  
 5 ~~UNAMENDED~~ MONTANA SUBDIVISION AND PLATTING ACT; ELIMINATING THE  
 6 OCCASIONAL SALE EXEMPTION; LIMITING THE IMMEDIATE FAMILY  
 7 EXEMPTION FOR AGRICULTURAL PRODUCERS; AMENDING SECTIONS  
 8 76-3-103, 76-3-104, AND 76-3-207, MCA; AND PROVIDING AN  
 9 IMMEDIATE EFFECTIVE DATE."  
 10  
 11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:  
 12 **Section 1.** Section 76-3-103, MCA, is amended to read:  
 13 "76-3-103. Definitions. As used in this chapter, unless  
 14 the context or subject matter clearly requires otherwise,  
 15 the following words or phrases shall have the following  
 16 meanings:  
 17 (1) "Agricultural producer" means a landowner who  
 18 demonstrates proof of agricultural production of at least  
 19 \$1,500 annually.  
 20 (2) "Certificate of survey" means a drawing of a  
 21 field survey prepared by a registered surveyor for the  
 22 purpose of disclosing facts pertaining to boundary  
 23 locations.  
 24 (3) "Dedication" means the deliberate appropriation  
 25 of land by an owner for any general and public use,

1 reserving to himself the landowner no rights which that are  
 2 incompatible with the full exercise and enjoyment of the  
 3 public use to which the property has been devoted.  
 4 (4) "Division of land" means the segregation of one  
 5 or more parcels of land from a larger tract held in single  
 6 or undivided ownership by transferring or contracting to  
 7 transfer title to or possession of a portion of the tract or  
 8 properly filing a certificate of survey or subdivision plat  
 9 establishing the identity of the segregated parcels pursuant  
 10 to this chapter.  
 11 (5) "Examining land surveyor" means a registered  
 12 land surveyor duly appointed by the governing body to review  
 13 surveys and plats submitted for filing.  
 14 (6) "Final plat" means the final drawing of the  
 15 subdivision and dedication required by this chapter to be  
 16 prepared for filing for record with the county clerk and  
 17 recorder and containing all elements and requirements set  
 18 forth in this chapter and in regulations adopted pursuant  
 19 thereto to this chapter.  
 20 (7) "Governing body" means a board of county  
 21 commissioners or the governing authority of any a city or  
 22 town organized pursuant to law.  
 23 (8) "Irregularly shaped tract of land" means a  
 24 parcel of land other than an aliquot part of the United  
 25 States government survey section or a United States

government lot, the boundaries or areas of which cannot be determined without a survey or trigonometric calculation.

~~(8) "Occasional sale" means one sale of a division of land within any 12-month period.~~

(9) "Planned unit development" means a land development project consisting of residential clusters, industrial parks, shopping centers, office building parks, or any a combination thereof which that comprises a planned mixture of land uses built in a prearranged relationship to each other and having open space and community facilities in common ownership or use.

(10) "Plat" means a graphical representation of a subdivision showing the division of land into lots, parcels, blocks, streets, alleys, and other divisions and dedications.

(11) "Preliminary plat" means a neat and scaled drawing of a proposed subdivision showing the layout of streets, alleys, lots, blocks, and other elements of a subdivision which furnish a basis for review by a governing body.

(12) "Registered land surveyor" means a person licensed in conformance with Title 37, chapter 67, to practice surveying in the state of Montana.

(13) "Registered professional engineer" means a person licensed in conformance with Title 37, chapter 67, to practice engineering in the state of Montana.

(14) "Subdivider" means any a person who causes land to be subdivided or who proposes a subdivision of land.

(15) "Subdivision" means a division of land or land so divided which that creates one or more parcels containing less than ~~20~~ 640 acres, exclusive of public roadways, in order that the title to or possession of the parcels may be sold, rented, leased, or otherwise conveyed and ~~shall~~ include ~~includes~~ any resubdivision and ~~shall~~ further ~~include~~ includes any a condominium or area, regardless of its size, which that provides or will provide multiple space for recreational camping vehicles or mobile homes."

**Section 2.** Section 76-3-104, MCA, is amended to read:

"76-3-104. What constitutes subdivision. A subdivision ~~shall comprise~~ comprises only those parcels less than ~~20~~ 640 acres which that have been segregated from the original tract, and the subdivision plat thereof ~~shall~~ must show all such the parcels whether contiguous or not."

**Section 3.** Section 76-3-207, MCA, is amended to read:

"76-3-207. Subdivisions ~~exempted~~ from review but subject to survey requirements -- exceptions. (1) Except as provided in subsection (2), unless the method of disposition is adopted for the purpose of evading this chapter, the following divisions of land are not subdivisions under this chapter but are subject to the surveying requirements of 76-3-401 for divisions of land not amounting to

1 subdivisions:

2 (a) divisions made outside of platted subdivisions for  
3 the purpose of relocating common boundary lines between  
4 adjoining properties;

5 (b) divisions made outside of platted subdivisions for  
6 the purpose of a single gift or sale to any a member of the  
7 landowner's an agricultural producer's immediate family;

8 (c) divisions made outside of platted subdivisions by  
9 sale or agreement to buy and sell where the parties to the  
10 transaction enter a covenant running with the land and  
11 revocable only by mutual consent of the governing body and  
12 the property owner that the divided land will be used  
13 exclusively for agricultural purposes;

14 ~~{d}--a--single--division--of--a--parcel--outside--of--platted~~  
15 ~~subdivisions--when--the--transaction--is--an--occasional--sale,~~

16 ~~{e}{d}~~ for five or fewer lots within a platted  
17 subdivision, relocation of common boundaries and the  
18 aggregation of lots; and

19 ~~{f}{e}~~ divisions made for the purpose of relocating a  
20 common boundary line between a single lot within a platted  
21 subdivision and adjoining land outside a platted  
22 subdivision. Any restrictions or requirements on the  
23 original platted lot or original unplatted parcel continue  
24 to apply to those areas.

25 (2) Notwithstanding the provisions of subsection (1):

1 (a) within a platted subdivision filed with the county  
2 clerk and recorder, any a division of lots which that  
3 results in an increase in the number of lots or which  
4 redesigns or rearranges six or more lots must be reviewed  
5 and approved by the governing body, and an amended plat must  
6 be filed with the county clerk and recorder;

7 (b) any change in use of the land exempted under  
8 subsection (1)(c) for anything other than agricultural  
9 purposes subjects the division to the provisions of this  
10 chapter.

11 (3) No division of land may be made under this section  
12 unless the county treasurer has certified that no real  
13 property taxes assessed and levied on the land to be divided  
14 are delinquent."

15 NEW SECTION. **Section 4.** Effective date. [This act] is  
16 effective on passage and approval.

-End-

## STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for HB0242, as introduced.

**DESCRIPTION OF PROPOSED LEGISLATION:** An act generally revising the Montana Subdivision and Platting Act by eliminating the occasional sale exemption, limiting the immediate family exemption for agricultural producers, amending existing statutes, and providing an immediate effective date.


**ASSUMPTIONS:**


1. Changing the definition of "subdivision" in the Subdivision and Platting Act from parcels less than 20 acres to parcels less than 640 acres will result in an increase in the number of subdivisions subject to review by the Department of Health and Environmental Sciences (DHES) under the Sanitation in Subdivisions Act (those less than 20 acres) by approximately 330 additional parcels during the next biennium.
2. The increase in subdivisions subject the DHES review is anticipated because land developers would no longer have an incentive to create parcels larger than 20 acres to avoid local planning review.
3. The anticipated increase in workload could likely be addressed by increased contracted services and increased grants to contracted local departments of health.
4. Revenue from subdivision review fees should offset costs to the DHES for the increased workload.
5. It is anticipated that the increased workload would be split equally between contracted services and local departments of health.
6. The DHES is having other legislation introduced that would create a state special revenue account and require that all fees collected would be deposited to this account. All Subdivision costs then would be appropriated from this account.
7. The legislation in assumption number 6 will be passed. If it is not passed, then the DHES will require a general fund appropriation for \$30,000 each year of the biennium to implement the proposal.

**FISCAL IMPACT:**

	FY '94			FY '95		
	Current Law	Proposed Law	Difference	Current Law	Proposed Law	Difference
<b>Expenditures:</b>						
Operating Expenses (contracts)	0	\$15,000	\$15,000	0	\$15,000	\$15,000
Grants to counties	0	\$15,000	\$15,000	0	\$15,000	\$15,000
Total	0	\$30,000	\$30,000	0	\$30,000	\$30,000
<b>Funding:</b>						
Subdivision Fees (02)	0	\$30,000	\$30,000	0	\$30,000	\$30,000

(Continued)

 1-25-93  
 DAVE LEWIS, BUDGET DIRECTOR DATE  
 Office of Budget and Program Planning

 1/25/93  
 EMILY SWANSON, PRIMARY SPONSOR DATE

Fiscal Note for HB0242, as introduced.

HB 242

Fiscal Note Request HB0242, as introduced.

Form BD-15 page 2

(continued)

FISCAL IMPACT: (Continued)

	<u>FY '94</u>			<u>FY '95</u>		
	<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>	<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>
<u>Net Impact:</u>	0	0	0	0	0	0

EFFECT ON COUNTY OR OTHER LOCAL REVENUES OR EXPENDITURES: DHES - Reimbursements to local health departments under contract with DHES to provide review services would increase by \$15,000 under this scenario.

COMMERCE - The passage of HB 242 would increase the numbers of land divisions that would be reviewed by Montana cities and most particularly Montana counties. The quantification of numbers and costs of these increased reviews is not available. Cities and counties have existing authority to charge fees to land developers to recover the costs of such subdivision reviews.

AGRICULTURE - Restricted subdivision activity could result in reduced land values and associated tax base. The effect to each county would vary depending upon subdivision potential (proximity to urban areas etc.).

LONG-RANGE EFFECTS OF PROPOSED LEGISLATION: DHES - Some long-term increase in subdivision applications to DHES is anticipated, but it would likely be less than the 15% increase projected for the next biennium.

AGRICULTURE - If subdivision restrictions result in reduced tax base, potential land value reductions may impact landowner credit worthiness.

TECHNICAL NOTES: DHES - This bill must be coordinated with LC914 to properly fund subdivision activities.

HB 242